

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil No. 3:24-cv-00783**

Jameson C., minor, by next friend STEVEN
BOLCH, et al.,

Plaintiffs,

v.

ROY COOPER, in his official capacity as the
Governor of North Carolina, et al.,

Defendants.

**DHHS DEFENDANTS' MOTION AND
SUPPORTING STATEMENT FOR
PRELIMINARY HEARING ON
MOTION TO DISMISS THE CLAIMS
AGAINST THE NORTH CAROLINA
DEPARTMENT OF HEALTH AND
HUMAN SERVICES AND ITS
OFFICIALS**

In accordance with ¶ 3(c)(ii) of this Court's Initial Scheduling Order, Defendants North Carolina Department of Health and Human Services (DHHS), Kody Kinsley in his official capacity as Director of DHHS, Susan Osborn in her official capacity as Assistant Secretary for County Operations of the Division of Social Services, and Mark Payne in his official capacity Director of the Division of Health Service Regulation (together, "the DHHS Defendants") hereby request a preliminary hearing on Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint pursuant to Rules 12(b)(1), 12(b)(6), and 12(b)(7) of the Federal Rules of Civil Procedure. The DHHS Defendants respectfully request that the Court hold a preliminary hearing on their Motion to Dismiss and not defer its ruling until the close of discovery.

Good cause exists for this request because, as explained in DHHS Defendants' concurrently-filed Motion to Dismiss and supporting memorandum, Plaintiffs' claims are barred by Eleventh Amendment immunity, and because Plaintiffs lack standing to bring these claims against the DHHS Defendants pursuant to Rule 12(b)(1). Additionally, Plaintiffs fail to state a Substantive Due Process Claim and fail to state a cause of action for their claims as to a right of

familial association, Title IV-E case planning provisions, or discrimination under the ADA or Section 504 of the Rehabilitation Act. Finally, Plaintiffs fail to join in their suit all North Carolina counties and the North Carolina Administrative Office of the Courts (NCAOC) as necessary parties.

The issues raised in the DHHS Defendants' Motion to Dismiss are fully dispositive legal issues ripe for resolution without initiating the discovery process, including because the DHHS Defendants are immune from suit pursuant to the Eleventh Amendment. *See* Initial Scheduling Order ¶ 3(c)(ii), Misc No. 3:07-MC-47, Doc. No. 2 (listing, as an example of good cause, that the defendant asserts the defense of immunity from suit).

For these reasons, Defendants request a preliminary hearing pursuant to this Court's Initial Scheduling Order to dispose of Plaintiffs' claims against the DHHS Defendants before the parties engage in discovery.

Respectfully submitted on this 6th day of December 2024.

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CERTIFICATION

Pursuant to Section 3(b)(iv) of the Court's Initial Scheduling Order, the undersigned certifies that the foregoing Memorandum of Law, excluding the case caption and certificates of counsel, does not exceed 4,500 words.

Respectfully submitted on this 6th day of December 2024.

/s/ Katherine M. McCraw
Katherine M. McCraw
Special Deputy Attorney General

AI CERTIFICATION

No artificial intelligence was employed in doing the research for the preparation of this document, with the exception of such artificial intelligence embedded in the standard on-line legal research sources Westlaw, Lexis, FastCase, and Bloomberg.

Every statement and every citation to an authority contained in this document has been checked by an attorney in this case and/or a paralegal working at his/her direction (or the party making the filing if acting pro se) as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

Respectfully submitted on this 6th day of December 2024.

/s/ Katherine M. McCraw
Katherine M. McCraw
Special Deputy Attorney General

CERTIFICATE OF SERVICE

I, Katherine M. McCraw, hereby certify that I caused a true and correct copy of the foregoing to be filed through the ECF system and served electronically on the registered participants as identified on the Notice of Electronic Filing.

This the 6th day of December, 2024.

/s/ Katherine M. McCraw
Katherine M. McCraw
Special Deputy Attorney General